

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

3 UNITED STATES OF AMERICA | DOCKET 4:13CR176-4
4 | AUGUST 31, 2015
5 VS. | 10:17 A.M.
6 LISA TUMLINSON | BEAUMONT, TEXAS

8 VOLUME 1 OF 1, PAGES 1 THROUGH 12

REPORTER'S TRANSCRIPT OF SENTENCING HEARING

10 BEFORE THE HONORABLE MARCIA A. CRONE,
UNITED STATES DISTRICT JUDGE

14 FOR THE GOVERNMENT: G.R. JACKSON
15 U.S. ATTORNEY'S OFFICE - PLANO
101 E. PARK BOULEVARD, SUITE 500
PLANO, TEXAS 75074

18 FOR THE DEFENDANT: KEVIN BLAKE ROSS
19 LAW OFFICE OF KEVIN B. ROSS, PC
8150 N. CENTRAL EXPRESSWAY
SUITE 601
DALLAS, TEXAS 75206

21 COURT REPORTER: CHRISTINA L. BICKHAM, CRR, RMR
22 FEDERAL OFFICIAL REPORTER
23 300 WILLOW, SUITE 221
BEAUMONT, TEXAS 77701

25 PROCEEDINGS RECORDED USING COMPUTERIZED STENOTYPE;
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1 (OPEN COURT, DEFENDANT PRESENT.)

2 THE COURT: This is Case No. 4:13cr176,
3 Defendant 4, *United States of America versus Lisa*
4 *Tumlinson*.

5 Are you ready to proceed?

6 MR. JACKSON: Good morning. Glenn Jackson for
7 the United States. We're ready to proceed, your Honor.

8 MR. ROSS: Good morning, your Honor. Kevin
9 Ross for Ms. Tumlinson, and we are ready to proceed.

10 THE COURT: Has the defendant signed the video
11 waiver form?

12 MR. ROSS: Yes, she has, your Honor.

13 THE COURT: All right. Have counsel and the
14 defendant read and discussed the presentence report,
15 including any revisions?

16 MR. ROSS: We have, your Honor.

17 THE COURT: And has counsel fully explained
18 the report to the defendant?

19 MR. ROSS: Yes, your Honor.

20 THE COURT: Ms. Tumlinson, do you fully
21 understand the presentence report?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Does counsel for defendant wish to
24 make any comments, additions, or corrections to the
25 report?

1 MR. ROSS: No, your Honor, we do not.

2 THE COURT: And, Ms. Tumlinson, does the
3 report adequately cover your background?

4 THE DEFENDANT: Yes, your Honor, it does.

5 THE COURT: Has the government read the
6 report; and does it wish to make any comments, additions,
7 or corrections?

8 MR. JACKSON: I have read the report. I have
9 no comments, additions, or corrections.

10 THE COURT: And no objections were filed; is
11 that correct?

12 MR. ROSS: That's correct, your Honor.

13 THE COURT: To the extent the court previously
14 deferred acceptance of the plea agreement, it is now
15 accepted.

16 The court finds that the information contained
17 in the presentence report has sufficient indicia of
18 reliability to support its probable accuracy. The court
19 adopts the factual findings, undisputed facts, and
20 guideline applications in the presentence report. Based
21 upon a preponderance of the evidence presented and the
22 facts in the report, while viewing the sentencing
23 guidelines as advisory, the court concludes that the
24 total offense level is 12. The criminal history level is
25 1, which provides for an advisory guideline range of 10

1 to 16 months. Does defendant's counsel wish to make any
2 remarks on behalf of the defendant?

3 MR. ROSS: Yes, your Honor.

4 Your Honor, I have had the privilege of
5 representing and working with Ms. Tumlinson for over two
6 years in regards to this case; and throughout that period
7 of time, Ms. Tumlinson has demonstrated her understanding
8 of the seriousness of the offense. She has genuinely
9 expressed remorse; but at the same time, your Honor, she
10 has also allowed this offense not to define her.

11 It's clear through the presentence report -- I
12 would direct the court's attention to paragraph 57 --
13 that as of May of 2013, she was able to find employment
14 in another medical office, Carter, Hays, Martin &
15 Associates. I think it is noteworthy in paragraph 57,
16 when contacted by probation, her employer stated that she
17 has done well and that they are aware of the pending
18 charges against her and the nature of those but, quote,
19 it's not affected her performance or our perception of
20 her.

21 And she has continued to demonstrate that she
22 can be a model citizen. She's been on pretrial release
23 for these two years and done exceptionally well, your
24 Honor. She has been cooperative with the government. We
25 submitted numerous character letters on her behalf that

1 not only show her past accomplishments, having numerous
2 accolades throughout her schooling, but also her present
3 state. If you refer to the letter by Dr. Amy Martin of
4 Carter, Hays, Martin & Associates speaking to
5 Ms. Tumlinson as being -- having proven herself reliable
6 and prompt, gentle and kind in nature with patients,
7 cooperates well with the team. And then after working
8 with her side-by-side for a number of months, she found
9 Lisa to ask appropriate questions and function only
10 within the boundaries of her job description.

11 Your Honor, she has learned from this
12 experience. She went into working with this clinic with
13 Dr. Niamatali young and naive. It was her first medical
14 assistant's job. She made a mistake. She didn't at the
15 time have the fortitude to say "no" to Dr. Niamatali and
16 did falsify some patient charts based on what he had told
17 her to do. That is in no way minimizing her
18 responsibility in this, your Honor; but it's providing
19 some context to it.

20 So, I would ask the court to consider -- we
21 had filed a motion for downward variance, your Honor.
22 We're asking that the court consider a probationary
23 sentence in this case. We believe that this case is one
24 in which Ms. Tumlinson not only has demonstrated that she
25 can be a good candidate for probation but that she can

1 abide by the terms and conditions of probation. But at
2 the same time, your Honor, she will be able to maintain
3 her employment that, as the court knows, is so difficult
4 to find once you have a felony conviction upon you,
5 especially even in this nature. But she has overcome
6 that. She has a job. They are willing to allow her to
7 stay in that employment. And, your Honor, if she were
8 sentenced to a sentence of imprisonment -- I understand
9 that there is a recommendation of a split sentence for
10 five months, but that would effectively cost her her job
11 and everything that she has worked for for these two
12 years while this was pending. So, we would ask for that
13 consideration, your Honor, in imposing sentence.

14 THE COURT: Does the government wish to
15 respond?

16 MR. JACKSON: Briefly, your Honor.

17 I will confirm that Ms. Tumlinson has been
18 very cooperative. I also agree with Mr. Ross'
19 characterization that in large part what she did was at
20 the direction of the lead defendant, Dr. Niamatali.
21 Notwithstanding that, we do oppose the motion for
22 variance. There is no factual or legal reason to take
23 this case outside of the guidelines. We would request a
24 sentence at the bottom of the guidelines, however, your
25 Honor. That's all.

1 THE COURT: All right. Motion for variance is
2 denied. This is a drug trafficking crime. It's
3 prescription drugs. I think there is a big problem with
4 prescription drugs. People aren't taking it very
5 seriously, and we're getting a lot of these prescriptions
6 willy-nilly. And apparently she really promoted that
7 ability because she participated by falsifying patient
8 charts and -- at a medical practice that was providing
9 hydrocodone, alprazolam, and promethazine with codeine
10 that was not medically indicated. So, that's denied.

11 Does defendant's counsel wish to make any
12 further remarks?

13 MR. ROSS: Not at this time; but Ms. Tumlinson
14 would like to make a statement, your Honor.

15 THE COURT: All right. If defendant wishes to
16 make a statement, go ahead.

17 THE DEFENDANT: Good morning, Judge Crone.
18 I've come before you today to further accept
19 responsibility for my actions. I am truly apologetic for
20 all that I have done that has gotten me in the
21 predicament that I am in today. I can assure you, your
22 Honor, that I will do everything within my power to make
23 sure that this situation does not recur; and if for any
24 reason I feel that questionable things are taking place,
25 I will remove myself from that office setting and report

1 all of these actions to the proper authorities
2 immediately.

3 After leaving the employment of Dr. Niamatali
4 and starting in the practice that I am currently with, my
5 eyes have been opened to how a professional, well-managed
6 medical office should operate. I feel enlivened with the
7 day-to-day exhilaration that comes with working in an
8 obstetrics and gynecology office.

9 Your Honor, I'm asking for leniency with a
10 probationary sentence based on my prior instantaneous
11 cooperation which initially began with my surrender into
12 custody in July of 2013; and that will continue as long
13 as I am needed to assist the government in any way
14 necessary to accommodate the successful resolution of
15 this case.

16 I hope that I may be granted the ability to
17 obtain my life's goal by continuing my education in the
18 medical field by pursuing a career as a registered nurse.
19 By doing so, I may achieve my highest goal of working in
20 Baylor Labor and Delivery Department.

21 Thank you, your Honor. I'm grateful for the
22 opportunity you have given me to present my allocution
23 statement before you today. I am appreciative of your
24 consideration, time, and understanding in the resolution
25 of my case.

1 THE COURT: All right. Does the attorney for
2 the government wish to make any further remarks?

3 MR. JACKSON: No further remarks, your Honor.

4 THE COURT: Does counsel know of any reason
5 why sentence should not be imposed at this time?

6 MR. ROSS: No, your Honor.

7 MR. JACKSON: No, your Honor.

8 THE COURT: Pursuant to the Sentencing Reform
9 Act of 1984, having considered the factors noted in
10 18 USC, Section 3553(a), and after having consulted the
11 advisory sentencing guidelines, it is the judgment of the
12 court that the Defendant Lisa Tumlinson is hereby
13 committed to the custody of the Bureau of Prisons to be
14 imprisoned for 10 months on Count 1 of the indictment.

15 The court finds the defendant does not have
16 the ability to pay a fine. The court will waive the fine
17 in this case.

18 It is noted the defendant shall pay the United
19 States a special assessment of \$100.

20 Upon release from imprisonment, the defendant
21 shall be on supervised release for a term of one year.
22 Within 72 hours of release from the custody of the Bureau
23 of Prisons, the defendant shall report in person to the
24 probation office in the district to which the defendant
25 is released.

1 Defendant shall not commit another federal,
2 state, or local crime and shall comply with the standard
3 conditions that have been adopted by this court. In
4 addition, the defendant shall comply with the mandatory
5 and special conditions set forth in the defendant's
6 presentence report.

7 The court has decided against the imposition
8 of a split sentence and as such there is no special
9 condition of supervised release requiring any term of
10 home confinement.

11 The court finds this to be a reasonable
12 sentence in view of the nature and circumstances of the
13 offense entailing the defendant's participation in a drug
14 trafficking conspiracy involving the distribution of
15 hydrocodone, alprazolam, and promethazine with codeine,
16 her knowing that a codefendant was selling numerous
17 dosage units of these drugs to patients for cash, and her
18 furthering this unlawful activity by falsifying patient
19 charts, her relatively minor role in the offense, and her
20 history of substance abuse. It will serve as just
21 punishment, promote respect for the law, and deter future
22 violations of the law.

23 You have a right to appeal your conviction if
24 you believe that your guilty plea was somehow unlawful or
25 involuntary or if there was some other fundamental defect

1 in the proceedings that was not waived by your guilty
2 plea.

3 You have a statutory right to appeal your
4 sentence under certain circumstances, particularly if you
5 think the sentence is contrary to law. A defendant,
6 however, may waive those rights as part of a plea
7 agreement; and you've entered into a plea agreement which
8 waives certain rights to appeal your conviction and
9 sentence. With the exception of the reservation of the
10 right to appeal on specified grounds set forth in the
11 plea agreement, you've waived any appeal, including
12 collateral appeal, of any error which may have occurred
13 surrounding the substance, procedure, or form of the
14 conviction and sentence in this case. Such waivers are
15 generally enforceable; but if you believe the waiver as
16 unenforceable, you can present that theory to the
17 appellate court. With few exceptions any notice of
18 appeal must be filed within 14 days of judgment being
19 entered in your case.

20 If you are unable to pay cost for appeal, you
21 may apply for leave to file *informa pauperis*. If you so
22 request, the clerk of the court will prepare and file a
23 notice of appeal on your behalf.

24 The presentence report is made a part of the
25 record and is to be placed under seal except counsel for

1 government and defense may have access to it for purposes
2 of appeal.

3 Were there any other counts?

4 MR. JACKSON: No, your Honor.

5 THE COURT: All right. And then I'll let
6 Ms. Tumlinson surrender two weeks of today, so
7 September 14th.

8 And is there a particular facility you wish to
9 request?

10 MR. ROSS: I believe we requested Fort Worth,
11 your Honor, Carswell.

12 THE COURT: Carswell. All right. I'll
13 recommend that.

14 Thank you. If there is nothing further, then
15 you are excused.

16 (Proceedings concluded, 10:30 a.m.)

17 COURT REPORTER'S CERTIFICATION

18 I HEREBY CERTIFY THAT ON THIS DATE, JULY 12,
19 2016, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
20 RECORD OF PROCEEDINGS.

21 
22 CHRISTINA L. BICKHAM, CRR, RMR

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